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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding Policies and Protocols for Demand Response Load Impact Estimates, Cost-Effectiveness Methodologies, Megawatt Goals and Alignment with California Independent System Operator Market Design Protocols.

Rulemaking 07-01-041  
(Filed January 25, 2007)

**ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE'S  
SCOPING MEMO AND RULING**

Pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure, this Scoping Memo and Ruling sets forth the procedural schedule, assigns the presiding officer, and addresses the scope of this proceeding and other procedural matters following the prehearing conference (PHC) held March 13, 2007. This ruling is appealable only as to category of these proceedings under the procedures in Rule 7.6.<sup>1</sup>

**1. Background**

This proceeding follows a broader proceeding, Rulemaking (R.) 02-06-001, initiated by this Commission in 2002 in order to develop a policy for demand response (DR) in California, addressing, "in a comprehensive manner, policies to develop demand flexibility as a resource to enhance electric system reliability,

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<sup>1</sup> All references to rules are to the Commission's Rules of Practice and Procedures. These rules are available on the Commission's website at [http://www.cpuc.ca.gov/word\\_pdf/RULES\\_PRAC\\_PROC/63835.doc](http://www.cpuc.ca.gov/word_pdf/RULES_PRAC_PROC/63835.doc).

reduce power purchase and individual consumer costs, and protect the environment.”<sup>2</sup> In this prior proceeding, the Commission developed a strategy and initial programs to encourage and implement DR within the territories of California’s three largest electric utilities, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas and Electric Company (SDG&E). R.02-06-001 was closed by Decision (D.) 05-11-009.

DR programs for 2006-2008 were approved and monitored through Application (A.) 05-06-006 et al., and the utilities will file applications for 2009-2011 DR programs not later than June 1, 2008, unless otherwise ordered by the Commission.<sup>3</sup>

D.05-11-009 identified a need to develop measurement & evaluation protocols and cost-effectiveness tests for DR. That decision ordered Commission staff to undertake further research and recommend to the Executive Director whether to open a proceeding to address these issues. Commission staff recommended opening a rulemaking, and as a result, on January 25, 2007, the Commission opened this rulemaking to address several specific issues related to the Commission’s efforts to develop effective DR programs for California’s investor-owned utilities. The Order Instituting Rulemaking (OIR) that initiated this proceeding addresses the general scope and ultimate goals for this proceeding. According to the OIR, this rulemaking will:

1. Establish a comprehensive set of protocols for estimating the load impacts of DR programs;

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<sup>2</sup> R.02-06-001, p. 1.

<sup>3</sup> D.06-03-024.

2. Establish methodologies to determine the cost-effectiveness of DR programs;
3. Set DR goals for 2008 and beyond, develop rules on goal attainment; and
4. Consider modifications to DR programs needed to support the California Independent System Operator's (CAISO) efforts to incorporate DR into market design protocols.<sup>4</sup>

These goals reflect the Commission's priorities for DR, which include: (1) improving future DR programs by determining and then emphasizing strategies with a proven, verifiable effect on electricity demand that are cost effective, (2) integrating DR into the utilities' electricity resources' procurement efforts, and (3) better aligning programs with the CAISO planning process.

On March 2, 2007, the assigned Administrative Law Judge (ALJ) issued a ruling requesting that parties file PHC statements by March 9, 2007. In most cases, these statements outlined parties' approaches to the issues raised in the OIR, suggested other issues for possible inclusion in the scope of this proceeding, and responded to questions outlined in the March 2, 2007 Ruling. The ALJ held the PHC on March 13, 2007, to create a service list, discuss possible approaches and schedules for reaching the goals outlined in the OIR and other issues identified by parties, and address other matters as necessary for the expeditious processing of the case. This Scoping Memo and Ruling determines the scope, schedule, necessity of hearing, and other matters concerning this proceeding.

The CAISO's market will be undergoing significant changes during the next several years with the implementation of its Market Redesign & Technology

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<sup>4</sup> OIR Goals, R.07-01-041, p. 1.

Update. The Commission intends to work with CAISO to incorporate DR into its new market design and our efforts will be enhanced by fostering a collaborative working relationship with the CAISO in this rulemaking. We note that we have been working collaboratively with the CEC on demand response issues, and we would like to consider extending a similar working relationship to the CAISO. This approach may well assist all three organizations to achieve our mutual and individual objectives in the area of demand response. As assigned Commissioner and assigned ALJ, we will provide additional guidance on these issues within the next few weeks.

## **2. Categorization, Need for Hearings, Ex Parte Rules and Designation of Presiding Officer**

The Commission preliminarily categorized this Rulemaking as ratesetting as defined in Rule 1.3(e) and anticipated that this proceeding would be conducted through written comments from the parties, workshops, and possibly limited evidentiary hearings on technical issues. The parties did not oppose the Commission's preliminary categorization of this proceeding, and I affirm the preliminary categorization of ratesetting. The *ex parte* rules as set forth in Rules 8.2 and 8.3 and Pub. Util. Code § 1701.3(c)<sup>5</sup> apply. Because of the technical nature of the issues involved in this proceeding, it is preferable to resolve the issues involved in this proceeding through workshops rather than hearings, and the attached schedule reflects this preference for workshops. While we do not anticipate the need for hearings in this proceeding, we recognize the possibility that limited evidentiary hearings may be helpful in resolving certain issues, and so we affirm this possibility acknowledged in the OIR.

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<sup>5</sup> All section references are to the Public Utilities Code unless otherwise indicated.

Pursuant to Rule 13.2(b), assigned Commissioner Chong has designated ALJ Jessica T. Hecht as the presiding officer. The provisions of § 1701.3(a) apply.

### **3. Scoping Memo**

This Rulemaking was initiated for certain, specific purposes described in the OIR document issued on January 25, 2007, by this Commission, and its primary focus must be on resolving these major goals. The following discussion divides the major work of this proceeding into two phases. The first, which starts immediately, focuses on measurement and evaluation activities related to OIR Goals 1 and 2 set forth above, and the second, which will start in fall 2007, focuses on OIR Goal 3, the more policy-oriented issue of DR goals.

#### **3.1 Phase 1**

Phase 1 consists of simultaneous parallel processes to achieve OIR Goals 1 and 2. Specifically, during this phase load impact protocols and cost effectiveness methodologies will be developed through a process that will include multiple workshops and opportunities for written party comments. Phase 1 will result in two separate products, a workshop report each on Goals 1 and 2, and the record for this portion of the proceeding will consist of these reports, as well as the proposals, comments, and other documents appropriately filed in their development.

##### **3.1.1 Scope of Issues Related to OIR Goal 1: Establish a Comprehensive Set of Protocols for Estimating the Load Impacts of DR Programs**

Work towards this goal will focus on the development of protocols for estimating the change in load due to DR activities. DR activities, as defined in

the OIR,<sup>6</sup> may utilize many different strategies, including (but not limited to) reliability programs, the use of incentive payments for participation, and/or dynamic pricing or other time-variable tariffs. To the extent possible, the results of this task should address the broad variety of DR approaches, including current and anticipated activities. More than one estimation protocol may be necessary to measure the impact of these different types of activities as accurately as possible.

It may be helpful to categorize DR activities based on relevant characteristics and to develop separate load estimation protocols for each category of activities. Relevant characteristics could include how and when a specific activity is dispatched and under what conditions it is likely to be available.<sup>7</sup> Categorization of DR activities is within the scope of this proceeding to the extent that it assists in the development of load impact protocols. Any proposed categories should be included in the load impact straw proposal discussed below.

We will consider whether load impact protocols proposed can be used by the CAISO for its planning purposes. Therefore, to the extent that CAISO is able

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<sup>6</sup> “ ‘Demand Response’ is defined as changes in electricity consumption by customers in response to signals in the form of electricity prices, incentives, or alerts during periods when the electricity system is vulnerable to extremely high prices or compromises to reliability.” (R.07-01-041, p. 2.)

<sup>7</sup> If the Commission finds appropriate, categorization of demand response activities defined in this proceeding may clarify, supplement, or replace current distinctions between “dispatchable” and “non-dispatchable” types of demand response, and between “reliability” and “price-responsive” programs currently used in discussions of demand response.

to provide timely input into this proceeding, its needs and concerns related to the load impact protocols are within the scope of this activity.

### **3.1.2 Scope of Issues Related to OIR Goal 2: Establish Methodologies to Determine the Cost-Effectiveness of DR Programs**

Work on this goal will proceed simultaneously with work related to OIR Goal 1, and will focus on development of one or more methodologies for determining the cost-effectiveness of DR activities. To the extent possible, the results of this task should address the broad variety of DR approaches, including current and anticipated future activities; different methodologies may be necessary for evaluating the cost effectiveness of different types of DR activities.

The scope of this task includes identifying all relevant quantitative and qualitative inputs (other than load impacts) that are important for determining cost-effectiveness of DR. In addition, the final product should recommend values for the inputs, or at least recommend methodologies for determining the value of the inputs. If further work is needed to develop satisfactory inputs, the Commission may consider relying on interim values or methodologies (e.g., estimates used in other proceedings) until additional work can be undertaken. If this appears necessary, parties should address what further work is needed.

Some issues raised by parties, such as system load factors and rate design issues, may naturally feed into the cost effectiveness methodology as inputs or in other ways. Beyond their implications for the development of cost effectiveness methodologies and load impacts, these issues are not within the scope of this proceeding and do not require separate treatment.

### **3.2 Phase 2**

#### **Scope of Issues Related to OIR Goal 3: Set DR Goals for 2008 and Beyond, and Develop Rules on Goal Attainment**

Phase 2 of this proceeding will focus on the development of measurable goals to be met by DR activities in California. Previously, the Commission issued D.03-06-032, which set goals for load savings from price responsive DR programs for 2003-2007. This decision provided that load savings from emergency interruptible programs would not count towards these goals. The goal for 2004 was modified based on program performance through April 1, 2004, in a ruling issued on June 2, 2004, but goals for subsequent years were not modified.

##### **3.2.1 DR Goal for 2008**

DR activities and budgets for 2008 have already been approved in A.05-06-006 et al., and will not be modified to account for new 2008 DR goals adopted in this proceeding. Given that 2008 goals will not affect the development of 2008 activities, parties advocated in the PHC statements and at the PHC itself that time should not be spent within the context of this proceeding developing 2008 goals. We agree, and recommend that the 2007 goal, 5% of the annual system peak load, be extended for 2008. Comments on this proposal are due within 10 days from the date of this scoping memo. We expect to formally put this proposal in front of the Commission in a future proposed decision, such as the decision on Phase 1 issues.

##### **3.2.2 DR Goals for 2009-2011**

Parties advocate for the development of DR goals for 2009-2011 in time to assist with planning for DR activities and budgets for this time period. This planning process is currently scheduled to take place in 2008. This proceeding

will focus on development of measurable goals that encourage types of DR activities that are consistent with state policy, and on developing rules for the attainment of these goals, including the determination of what sorts of activities contribute towards those goals. The categories of DR that we anticipate being developed in Phase 1 of this proceeding may be helpful in making this determination.

The goals developed in this proceeding need not take the same form as the goals previously adopted for 2003-2007, which addressed the reduction of annual peak load (in megawatts or as a percent of peak) from non-interruptible DR activities. Similarly, the determination of what DR activities count towards the goals may differ from those used in the past, and may or may not be the same as used for resource adequacy. In developing these goals, the Commission will consider the CAISO's need for accurate information on the amount and conditions for availability of DR in order to incorporate DR into its market design, forecasting, and procurement.

### **3.3 Schedule and Phase to be Determined:**

#### **Goal 4: Consider Modifications to DR Programs Needed to Support the CAISO Efforts to Incorporate DR into Market Design Protocols**

As much as possible, consideration of the CAISO's needs will be incorporated into Phases 1 and 2 of this proceeding. Modifications to DR activities and programs needed to support the CAISO may also be considered in the proceeding in which 2009-2011 DR activities and budgets will be developed. To the extent that input from the CAISO stakeholder process contemplated in this proceeding is not available in time to inform the work described above, it may be necessary to add an additional phase to this proceeding. If this becomes

necessary, we will issue further guidance on the scope and schedule of those additional activities.

### **3.4 Issues Outside the Scope of this Proceeding**

This docket is not expected to examine all issues related to or affected by demand response; the full scope of this proceeding is as described above. We have determined that the following issues suggested by parties for inclusion in this proceeding are not within the scope. The issues below are addressed only because they were suggested for inclusion by a party; there may be other DR-related issues also not within the scope.

- **Implication of the Recent Decisions from the United States Court of Appeals for the Ninth Circuit on the legality of CAISO Tariffs:** This proceeding focuses on cost effectiveness, goals, and other issues related to evaluating existing and future DR programs. The legality of CAISO tariffs is not closely related to DR goals, evaluation of DR activities, nor the design of DR activities to support CAISO market development and resource planning efforts, and is therefore outside the scope of this proceeding.
- **Access to DR for Direct Access customers:** This issue does not relate directly to the major topics of this proceeding, which include the goals for and methods for evaluating DR activities. The scope of this proceeding will not be expanded to include an examination of this subject, which seems more closely related to the structure and funding of existing and future DR activities.
- **Use of private meters:** This issue does not relate directly to the major topics of this proceeding, which include the goals for and methods for evaluating DR activities. The scope of this proceeding will not be expanded to include an examination of this subject, which seems more closely related to the structure and funding of existing and future DR activities.

- Possibility of DR interaction with Advanced Metering Infrastructure (AMI):** To the extent that AMI will change the types of DR activities undertaken or the amount of DR available, this issue may be incorporated into Phase 1 and 2 products, which are expected to accommodate anticipated as well as current activities. The cost-effectiveness of AMI is not an issue in this proceeding since it is given consideration in the respondents' AMI deployment applications. For these reasons, AMI is not a separate issue within the scope of this proceeding.

#### 4. Schedule

As described above, this scoping memo divides the major work of this proceeding into two phases. Because Phase 1 issues may inform work on Phase 2, Phase 2 is currently scheduled to start in fall 2007, after workshops on load impact protocols and cost effectiveness methodologies are expected to be complete. The schedule for Phase 1 will be adhered to as closely as possible for the remainder of the proceeding. The ACR targeted for release on August 1 on 2009-2011 DR goals will provide a more specific schedule for Phase 2 of this proceeding, and if necessary an additional scoping memo will address CAISO issues not included in these phases.

Date	Action
<b>Phase 1: Load Impact (LI) estimation protocols, other Cost Effectiveness inputs, and Cost Effectiveness methodology (CE)</b>	
May 3-4, 2007	Workshops on LI and CE methodology: to get party input on staff guidance for straw proposals Location: Hearing Room A California Energy Commission 1516 Ninth St. Sacramento, CA 95814
May 18, 2007	Release staff guidance for LI and CE methodologies

July 13, 2007	LI and CE “straw proposals” filed: one of each by joint IOUs, others by additional parties if desired
July 19-20, 2007	Workshop to present straw proposals and answer questions: June 19 (Training Room A) on LI, June 20 (Training Room B) on CE Location: California Public Utilities Commission State Office Building 505 Van Ness Avenue San Francisco, CA 94102
July 27, 2007	Comments filed on straw proposals to inform workshops
August 1-3, 2007	Workshops: Aug 1 on LI, Aug 2-3 on CE. To discuss areas of agreement and disagreement among different parties and interests, and work to resolve those differences. Location: Training Room A on August 1-2 Training Room B on August 3
August 22, 2007	Post-workshop Reports filed. For each issue (LI and CE), investor-owned utilities (IOU) should designate one utility to draft a summary of the workshop and a comparison exhibit of the workshop participants’ positions. The drafting IOU for each issue will work with parties to ensure that the summary and comparison is agreeable to all workshop participants and clearly defines areas of agreement and disagreement.
August 24, 2007	Last day to file a request for evidentiary hearings.
September 19, 2007	Workshop reports (by Energy Division) with recommendations
October 5, 2007	Comments on workshop report filed
Early January 2008	Proposed Decision
February 2008	Earliest possible Commission vote on CE and LI methodologies

<b>Phase 2: 2008-2011 Goals</b>	
<i>2008 Goals</i>	
April 2007	Scoping memo recommending extension of 2007 goals
10 days after scoping memo	Comments due on recommendation for 2008
Targeted for Phase 1 decision	Decision confirming extension of 2007 goals to 2008
<i>2009-2011 Goals</i>	
August 1, 2007	ACR with guidance on what goal proposals should address
October 1, 2007	Goal proposals, including rules for goal attainment and definitions of what counts towards goals, due from parties
October 10, 2007	Workshop on proposals – Training Room B
October 31, 2007	Workshop report from Energy Division
November 14, 2007	Comments on workshop report
February 2008	Proposed Decision
March 2008	Earliest possible Commission vote on 2009-2011 goals

<b>Phase to be Determined: CAISO</b>	
To be determined	Issues related to this goal will feed into the above schedules or be scheduled separately later, as appropriate.

This schedule does not include a scheduled opportunity for evidentiary hearings. Parties attending the PHC expressed a nearly uniform view that

workshops are the most appropriate venue for resolving the technical issues that comprise most of this proceeding, and represented a high degree of commitment to resolving issues through workshops, without the need for hearings.<sup>8</sup> We agree that hearings are not the best forum for resolving these issues, and we appreciate the parties' commitment to avoiding hearings through an extensive workshop and comment process. We expect parties to work to resolve all issues as expeditiously as possible through workshops and informal discussions, and remind all participants that disagreement among parties on limited issues after workshops does not always necessitate formal hearings. The schedule outlined above provides ample opportunity for parties to communicate any remaining concerns on the record through comments.

Accordingly, if any party contends that evidentiary hearings are needed to address Phase 1 issues, it shall, no later than August 24, 2007 file a motion requesting evidentiary hearings. This motion shall:

- (1) Identify each area of relevant factual inquiry that has not been addressed;
- (2) Identify each material contested issue of fact on which hearings should be held (explaining, as necessary, why the issue is material); and
- (3) State why a hearing is legally required.

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<sup>8</sup> The Division of Ratepayer Advocates and The Utility Reform Network supported the concept of workshops, but reserved the right to request hearings.

Consistent with Pub. Util. Code § 1701.5, the Commission anticipates that this proceeding will be completed within 18 months of the date of this scoping memo.

## **5. Filing, Service and Service List**

In this proceeding, there are several different types of documents participants may prepare. Each type of document carries with it different obligations with respect to filing and service.

Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. Resolution ALJ-188 sets forth the interim rules for electronic filing, which replaces only the filing requirements, not the service requirements. Parties are encouraged to file electronically whenever possible as it speeds processing of the filings and allows them to be posted on the Commission's website. More information about electronic filing is available at <http://www.cpuc.ca.gov/efile/static.htm>.

Other documents, including prepared testimony, are served on the service list but not filed with the Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an email address. If no email address was provided, service should be made by United States mail. In this proceeding, I require concurrent e-mail service to ALL persons on the service list for whom an email address is available, including

those listed under “Information Only.” Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the following information on the subject line of the e-mail: R.0701041-DR. In addition, the party sending the e-mail should briefly describe the attached communication; for example, *Brief*. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

The official service list for this proceeding is available on the Commission’s web page. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission’s Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list. The list on the Commission’s website meets that definition.

Any person interested in participating in this proceeding who is unfamiliar with the Commission’s procedures or who has questions about the electronic filing procedures should contact the Commission’s Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **6. Intervenor Compensation**

The PHC in this matter was held on March 13, 2007. Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation should have filed and served a notice of intent to claim compensation not later than April 12, 2007. As a reminder to parties, the Legislature has instructed us to administer the intervenor compensation program in a manner that “avoids

unproductive or unnecessary participation of similar interests otherwise adequately represented ...”<sup>9</sup> We expect all parties to closely coordinate their work to avoid unproductive or unnecessary participation. Furthermore, we expect each party requesting compensation to distinguish its contributions from those of other parties in its request for compensation. Parties are also reminded that work on issues determined to be outside the scope of this proceeding will not be compensated. A separate ruling will address eligibility to claim compensation.

Therefore, **IT IS RULED** that:

1. This ruling confirms the Commission’s preliminary finding in the initiating OIR that the category for this proceeding is ratesetting and that limited hearings may be necessary. This ruling, only as to category, is appealable under the procedures in Rule 7.6.
2. The ex parte rules as set forth in Rules 8.2 and 8.3 and Pub. Util. Code § 1701.3(c) apply in this proceeding.
3. Administrative Law Judge Hecht is the presiding officer.
4. The scope of this proceeding is as set forth in Section 3 of this Ruling.
5. The schedule of this proceeding is as set forth in Section 4 in this ruling.
6. Parties should serve all filings as set forth in Section 5 of this Ruling.
7. We recommend that the 2007 demand response goal, 5% of the annual system peak load, should be extended and apply for 2008. Comments on this recommendation must be filed within 10 days of the date of this ruling.

Dated April 18, 2007, at San Francisco, California.

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<sup>9</sup> Section 1801.3(f). D.06-12-041, pp. 13-14.

/s/ RACHELLE B. CHONG

Rachelle B. Chong  
Assigned Commissioner

/s/ JESSICA T. HECHT

Jessica T. Hecht  
Administrative Law Judge

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 18, 2007, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid